

# THE SUNNYVALE PUBLIC LANDS ACT

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# WHAT IS THE SPLA?

The Sunnyvale Public Lands Act is a measure designed to give the citizens of Sunnyvale a measure of direct decision making over the sale or other transfer of certain real property belonging to the City.

# THE TEXT OF THE SPLA

2.07.030. Awarding authority for purchases, sales or leases of real property.

(a)The city council shall be the awarding authority for all purchases, sales or leases of real property for the city where the purchase or sales price or total lease cost exceeds seventy-five thousand dollars.

(b)The city manager shall be the awarding authority for all purchases, sales or leases of real property for the city where the purchase or sales price or total lease cost is seventy-five thousand dollars or less, or where the lease results in revenue to the city and is for a period less than or equal to fifty--five years.

# THE TEXT OF THE SPLA

- (c) Notwithstanding the foregoing in subsections (a) and (b), **any land, that on the effective date of this subsection ( c) or at any later time is owned, leased, or used by the city as a public park or a community service amenity, as defined in subsection (d), land otherwise transferred to the city to be used as a public park or a community service amenity, or the rights to use such land** may not be the subject of a sale, lease, lease extension, lease renewal, land swap, or transfer unless the issue of the sale, lease, lease extension, lease renewal, land swap, or transfer is submitted to the qualified voters of the city at an election and is approved by a majority of the votes received at the election.

# Definition of “Community Service Amenity”

**"Community service amenity"** means libraries, swimming pools, community centers, performing arts venues, gardens, golf courses, zoos, city hall, city administration buildings, and other similar facilities and the land on which the facilities stand, **whose primary purpose is to provide the public a place of city government administration, recreation, education, exercise, or enjoyment.**

# SO A “COMMUNITY SERVICE AMENITY”

- A library, swimming pool, community center, performing arts venue, garden, golf course, zoo, city hall, city administration building, and other similar facility
  - the land on which such facility stands
- whose primary purpose is to provide the public
  - a place of
    - city government administration
    - recreation
    - education
    - exercise, or
    - enjoyment

# Merriam-Webster: Dictionary and Thesaurus

- **Full Definition of *administration***
- *1* : performance of executive duties : [management](#)
- *2* : the act or process of [administering](#)
- *3* : the execution of public affairs as distinguished from policy-making
- *4 a* : a body of persons who [administer](#); *b often capitalized* : a group constituting the political executive in a presidential government; *c* : a governmental agency or board
- *5* : the term of office of an [administrative](#) officer or body

# The Free Dictionary by FARLEX

*The performance of executive duties in an institution or business. The [Small Business Administration](#) is responsible for administration of some disaster-relief loans. **In government, the practical management and direction of some department or agency in the [Executive Branch](#)**; in general, the entire class of public officials and employees **managing the executive department**. The management and distribution of the estate of a decedent performed under the supervision of the surrogate's or probate court by a person duly qualified and legally appointed. If the decedent made a valid will designating someone called an executor to handle this function, the court will issue that person letters testamentary as authority to do so. If a person dies intestate or did not name an executor in his or her will, the court will appoint an administrator and grant him or her [Letters of Administration](#) to perform the duties of administration.*



## Definition of “Public Park”

"**Public park**" means **land set apart for the recreation of the public**, to promote its health and enjoyment, to maintain open space in the city and also includes city-owned public land which may be shared by agreement with adjacent public schools to augment the public school's outdoors recreation area.

# SO A “PUBLIC PARK” IS

- Land set apart
  - For the recreation of the public
    - to promote the public’s health and enjoyment
    - to maintain open space in the city
  - and it includes public land
    - shared by agreement with adjacent public schools
      - to augment the public school’s outdoors recreation area.

# WHAT IS AN ‘ELECTION?’

- Elections Code section 318:

"Election" means any election including a primary that is provided for under this code.

# Merriam-Webster: Dictionary and Thesaurus

- **Full Definition of *election***
- *1 a* : an act or process of [electing](#) <*the election of a new governor*>*b*  
: the fact of being [elected](#) <*her election to the Senate*>
- *2* : predestination to eternal life
- *3* : the right, power, or privilege of making a choice

# The Act Would Not Affect Leasing of Properties Currently Leased As Something Other than a Park or a Community Service Amenity

- Statement by an opponent to the SPSA: “The City gets about \$600k per year in lease revenue from properties clearly falling under the proposed ordinance.”
- Probably not true. The SPLA would apply to **land, that on the effective date of this subsection ( c) or at any later time is owned, leased, or used by the city as a public park or a community service amenity.**
- If the land is owned, leased, or used as something else at the time the SPLA is enacted, the SPLA would not apply to it.

# It Wouldn't Apply to a Sunnyvale Fire Station

- The City facility's **“primary purpose [must be] to provide the public a place of city government administration.”**
- Normally the primary purpose of a fire station is not as a place of city government administration.

# SPLA WOULD NOT ADD MUCH TO ELECTION COST

- First, the measure says it has to take place at an election. I.e., when the City or State is having an election of some human being to office.
- The cost of \$41,000 for a ballot measure is nothing compared with the value of land today.
- The cost of performing due diligence and analyzing the legal implications of a land transaction would not amount to \$100,000 per transaction.
  - In addition, due diligence and analysis should have to be done regardless of whether there a vote on the transaction under the SPLA.

# MANAGEMENT PARTNERS FAILED TO PREPARE THE NEEDED REPORT

The City hired Management Partners to prepare a report analyzing the SPLA. Management Partners didn't do what they were hired to do.

This is hidden on page 13 of their report: "The language, in several cases, is ambiguous in terms of its ultimate applicability to various property types and transactions. *Management Partners did not conduct a legal analysis of the ballot language.*"

How can they say it's ambiguous when they haven't conducted a legal analysis of the ballot language? They can't. It would be a court that would ultimately determine whether or not the language is ambiguous. They should have involved at least one lawyer to address the question.



# THOSE WHO WROTE THE MANAGEMENT PARTNERS' REPORT CAN'T READ

This is from the Report about the SPLA:

**“The initiative specifies that for a property to be covered as a CSA it must be the property’s “primary use.”** However, how primary use is determined is not defined.

- Is it defined as a percentage of area used, as a CSA?
- Is it defined as a percentage of people using the facility? (For example, the number of public individuals using the facility for education, exercise or enjoyment, relative to city employees?)”

# THE SPLA DOES NOT USE THE TERM “PRIMARY USE”

- The SPLA uses the term “primary purpose,” a term that is quite different from “primary use.”
- Thus, our City paid Management Partners to analyze language that isn’t even in the SPLA.
- Management Partners relied on language not used in the SPLA to conclude that the SPLA is ambiguous.

# MANAGEMENT PARTNERS FAILED TO PERFORM AS THEY CLAIM THEY DID IN THEIR “REPORT”

Here’s what they claim they did: “However, based on our extensive experience with local government management practices, we analyzed each property against two possible interpretations:

Narrow Interpretation. Using a strict interpretation of the language as specified in the initiative that would likely be agreed to by the City, initiative proponents, and ultimately the community.”

Rather than doing this, they applied two broad interpretations of the language of the initiative to City properties.

# MANAGEMENT PARTNERS' OVERLY BROAD "NARROW INTERPRETATION"

- EG. "Any land or portions of properties used for recreation (public park, trails, open space)."
- EG. "Land or portions of properties used for recreation, hiking, biking, or other active recreation or exercise purposes."
- EG. "Areas used for recreational purposes, e.g., trails, are covered even though that is not the primary purpose of the land."
- Eg. "**Vacant lots.**"
- Eg. "**Publicly accessible parking lots.**"

# MANAGEMENT PARTNERS' OVERLY BROAD "NARROW INTERPRETATION"

- Eg. "Landfills, sloughs, and channels."
- MP's "narrow interpretation" ignores the limitation of **"land set apart for the recreation of the public"** on the definition of "public park" and the limitation of **"primary purpose is to provide the public a place of city government administration, recreation, education, exercise, or enjoyment"** on the definition of "community service amenity."
- But even Management Partners agree the SPLA would not apply to a fire station under the "narrow interpretation."

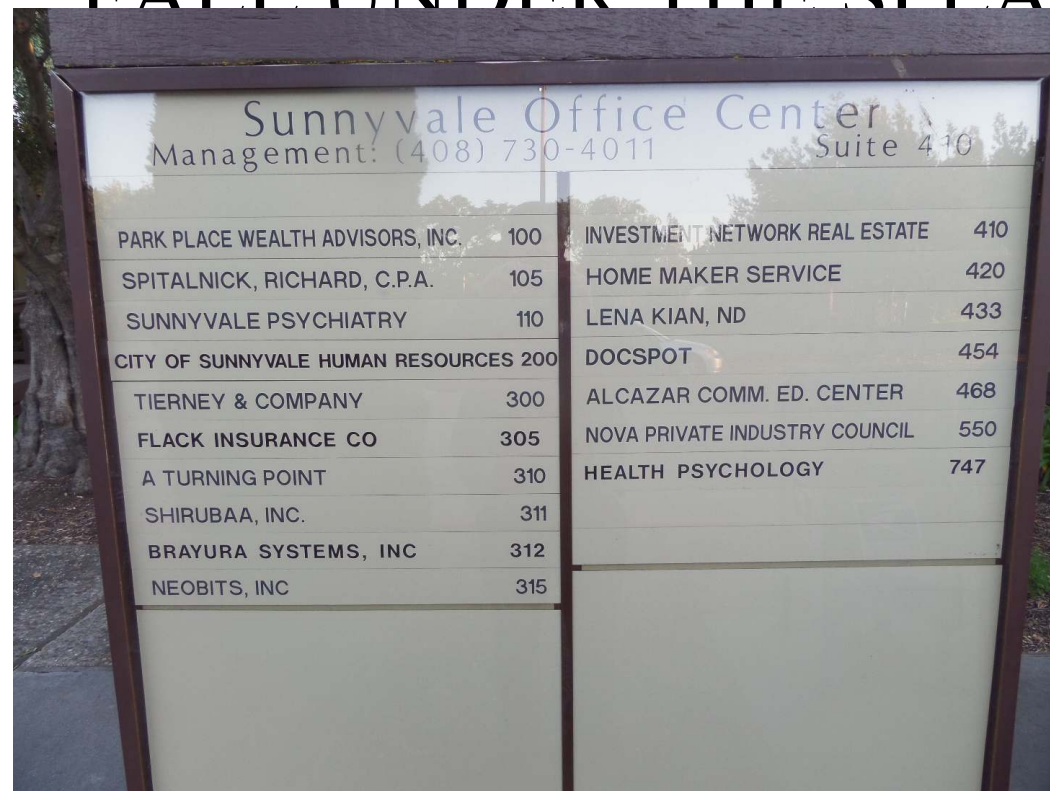
**SOUTH MATHILDA OVERPASS –  
MANAGEMENT PARTNERS’ “NARROW  
INTERPRETATION” SAYS THIS WOULD  
FALL UNDER THE SPLA**



# INTERPRETATION THAT A PARKING LOT WOULD FALL UNDER THE SPLA

- This interpretation would bring every City structure under the SPLA.
- Apparently the argument is that the primary purpose of a public parking lot is the enjoyment of the public, and not just getting from one place to another.
- The same argument could be made regarding the architecture of any City structure. The primary purpose is to be aesthetically pleasing, i.e., for the enjoyment of the public.

# SUNNYVALE OFFICE CENTER – MANAGEMENT PARTNERS’ “NARROW INTERPRETATION” SAYS THIS WOULD FALL UNDER THE SPLA



Sunnyvale Office Center  
Management: (408) 730-4011 Suite 410

PARK PLACE WEALTH ADVISORS, INC.	100	INVESTMENT NETWORK REAL ESTATE	410
SPITALNICK, RICHARD, C.P.A.	105	HOME MAKER SERVICE	420
SUNNYVALE PSYCHIATRY	110	LENA KIAN, ND	433
CITY OF SUNNYVALE HUMAN RESOURCES	200	DOCSPOT	454
TIERNEY & COMPANY	300	ALCAZAR COMM. ED. CENTER	468
FLACK INSURANCE CO	305	NOVA PRIVATE INDUSTRY COUNCIL	550
A TURNING POINT	310	HEALTH PSYCHOLOGY	747
SHIRUBAA, INC.	311		
BRAYURA SYSTEMS, INC	312		
NEOBITS, INC	315		



# THE SUNNYVALE OFFICE CENTER WOULD NOT FALL UNDER THE SPLA

- The SPLA would apply to **land, that on the effective date of this subsection ( c) or at any later time is owned, leased, or used by the city as a public park or a community service amenity.**
- If the land is owned, leased, or used as something else at the time the SPLA is enacted, the SPLA would not apply to it.
- The Sunnyvale Office Center is currently not owned, leased, or used by the City as a public park or a community service amenity.

# Dona Avenue PG & E

Girl Scout House

PG&E Lots

- City Maintains 20 Foot Strip North and Southside of lots

# MANAGEMENT PARTNERS SAYS THE SPLA IS AMBIGUOUS BECAUSE IT DOES NOT DEFINE “LEASE”

- But on page 21, Management Partners’ report sets out the definition of lease:

“Leases are specifically covered by the initiative.

*A lease is an agreement in which the landlord agrees to give the tenant the exclusive right to occupy real property, usually for a specific term and, in exchange, the tenant agrees to give the landlord some sort of consideration. A lease transfers to the tenant a leasehold interest in the real property and, unless otherwise provided in the lease, a lease is transferable and irrevocable.”*

So Management Partners knows what a lease is, and presumably the City Council will be able to figure this out too.

# THE MANAGEMENT PARTNERS REPORT IGNORED THE PHRASE “LAND SET APART FOR THE RECREATION OF THE PUBLIC”

- Management Partners apparently has concluded that any open space owned by the City would fall under the SPLA.
- It's not just “open space” that would be protected by the SPLA. It has to be open space “set apart for the recreation of the public.”

	APN #	Category	Site Description	Acreage	Current Use	Comments	Covered?
13	165-40-001	Golf course	Muni Golf Course South	21.45	Recreation	Recreational Use	Narrow
14	160-56-004	Golf course	Svle Muni Golf Course	40.00	Recreation	Recreational Use	Narrow
15	165-04-001	Library	Library	6.14	Operations	Public Facility	Narrow
16	209-05-047	Open space/public enjoyment	Carol Street Parking Lot	1.50	Parking	Downtown Parking	Narrow
17	165-14-046	Open space/public enjoyment	Charles Evelyn / Parklot	0.58	Parking	Downtown Parking	Narrow
18	165-14-045	Open space/public enjoyment	Charles Evelyn / Parklot	0.68	Parking	Downtown Parking	Narrow
19	209-10-060	Open space/public enjoyment	E. Mckinley / Carol Park Lot	0.29	Parking	Downtown Parking	Narrow
20	209-06-076	Open space/public enjoyment	Evelyn / Svle Ave. Parklot	0.09	Parking	Downtown Parking	Narrow
21	209-06-073	Open space/public enjoyment	Frances Parklot	1.40	Parking	Downtown Parking	Narrow
22	165-26-002	Open space/public enjoyment	Mathilda Sobrante	1.00	Parking	Underneath Overpass Parking	Narrow
23	209-06-082	Open space/public enjoyment	Multimodal Parklot	0.86	Parking	Downtown Parking	Narrow
24	209-10-062	Open space/public enjoyment	Sunnyvale / McKinley Park Lot	0.58	Parking	Downtown Parking	Narrow
25	209-06-071	Open space/public enjoyment	Sunnyvale Ave Park Lot	1.22	Parking	Downtown Parking	Narrow
26	No APN	Open space/public enjoyment	Under Mathilda Overpass So.	0.50	Parking	Parking	Narrow
27	110-12-086	Park	234 Garner	0.15	Residential	Demolished for Park Expansion	Narrow
28	110-12-094	Park	252 Garner	0.15	Residential	Demolished for Park Expansion	Narrow
29	204-44-037	Park	263 Jackson Street	0.16	Residential	Adjacent to Murphy Park - Vacant for park expansion	Narrow
30	110-12-091	Park	266 Garner	0.16	Residential	Demolished for Park Expansion	Narrow

	APN #	Category	Site Description	Acreage	Current Use	Comments	Covered?
54	110-14-202	Park	Seven Seas Park	5.33	Recreation	Public Park	Narrow
55	205-55-040	Park	Swegles Park	0.91	Recreation	Public Park	Narrow
56	205-46-031	Park	Victory Village Park	0.73	Recreation	Public Park	Narrow
57	165-11-001	Park	Washington Park	11.85	Recreation	Public Park	Narrow
58	211-28-035	Park/Open Space	Crescent Channel	0.76	Flood Control	Adj. to Flood Control Channel	Narrow
59	202-39-041	Park/Open Space	End of Remington Court	0.32	No Current Use	Part of Crk Trail Ext Study - Stevens Creek	Narrow
60	202-39-006	Park/Open Space	End of Remington Court	2.48	No Current Use	Part of Crk Trail Ext Study - Stevens Creek	Narrow
61	198-25-042	Park/Open Space	Girl Scout House	0.05	No Current Use	Demolished March 2015	Narrow
62	015-35-021	Park/Open Space	Guadalupe Slough	347.60	Flood Control	Holding Pond	Narrow
63	015-35-018	Park/Open Space	Guadalupe Slough	6.65	Flood Control	Holding Pond - In Alviso	Narrow
64	015-35-017	Park/Open Space	Guadalupe Slough	25.50	Flood Control	Holding Pond - In Alviso	Narrow
65	015-35-007	Park/Open Space	Guadalupe Slough	89.10	Flood Control	Holding Pond - In Alviso	Narrow
66	015-35-003	Park/Open Space	Guadalupe Slough	26.16	Flood Control	Holding Pond	Narrow
67	202-38-042	Park/Open Space	Oak Avenue	2.13	No Current Use	Part of Crk Trail Ext Study - Stevens Creek	Narrow
68	198-27-011	Park/Open Space	PGE Powerstrip	0.09	No Current Use	20' strip o/s PGE lots	Narrow
69	198-27-009	Park/Open Space	PGE Powerstrip	0.09	No Current Use	20' strip o/s PGE lots	Narrow
70	198-25-044	Park/Open Space	PGE Powerstrip	0.05	No Current Use	20' strip o/s PGE lots	Narrow

# GIRL SCOUT HOUSE ON DONA



# LEGAL COSTS OF TRANSACTIONS

The Report estimates that the City's legal costs will exceed \$100,000 each time a transaction must be defended. This is silly.

1. A City lawyer will be defending the transaction; i.e., someone familiar with the specific legal process.

2. Those questioning the transaction are not likely to have the resources of the City; there will be few objections other than those made at City Council meetings.

3. The few legal challenges would be resolved through summary judgment; it would be unlikely a challenge would go to trial.